

**DIVISION CIRCULAR #41
(N/A)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: September 30, 1996

DATE ISSUED: September 30, 1996

(Rescinds Division Circular 41, "Informed Consent", issued June 17, 1991)

I. TITLE: Informed Consent

II. PURPOSE: To establish policies to obtain informed consent.

III. SCOPE: This circular applies to all components of the Division as well as agencies under contract with or regulated by the Division.

IV. POLICIES:

- Instances where informed consent is required shall be specified in the appropriate Division Circular.
- In the instance of minors, the legal guardians are the natural or adoptive parents unless another guardian has been legally appointed.
- Informed consent shall be required for certain medical or behavioral treatment as well as for invasion of privacy.
- Informed consent shall not be coerced.
- A competent individual or the guardian of an individual shall have the right to refuse treatment.
- A Chief Executive Officer (CEO) has the authority to grant consent in certain limited instances as prescribed by N.J.S.A. 30:4-7.2.
- Informed consent may only be obtained from a competent adult or from the guardian of a minor or incompetent adult. If the Bureau of Guardianship Services (BGS) has administrative guardianship, BGS is considered the legal guardian until other disposition is made by the court.
- When there is the need for medical treatment and no guardian exists, a special medical guardian may be appointed in accordance with Division Circular #32.

- When medical treatment is to be performed by a facility outside the Division, that facility shall be responsible to obtain informed consent.
- A guardian ad litem shall be required for a minor or incompetent adult if the use of electro shock, psychosurgery, sterilization, or medical, behavioral or pharmacological research is proposed. N.J.S.A. 30:6D-4.
- When the court has established limited guardianship, informed consent by the individual or guardian shall be in accordance with the court order.

V. **GENERAL STANDARDS:**

- A. **DEFINITIONS** - For the purpose of this circular, the following terms shall have the meaning defined herein:
1. "Chief Executive Officer (CEO)" means the person having administrative authority over a developmental center.
 2. "Informed Consent" means a formal expression, oral or written, of agreement with a proposed course of action by someone who has the capacity, the information and the ability to render voluntary agreement.
 3. "Invasion of Privacy" means the release of confidential information or records, photographs and/or video tapes of the individual which may be used outside the normal provision of services, identification of the individual in publications or personal interviews.
 4. "Limited guardianship" means a legal disposition whereby a guardian is granted authority by a court of competent jurisdiction to act only in specifically prescribed areas of decision-making where an individual lacks capacity.
 5. "Power of Attorney" means an instrument in writing whereby one person, as principal, appoints another as his or her agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal. Such power may be either general (full) or special (limited).
 6. "Regional Administrator" means the person with administrative authority over a Regional Office of Community Services.

7. "Regional Assistant Director (RAD)" means an individual appointed by the Division Director to plan, organize and deliver integrated community-based and institutional services to a specific region.
- B. In securing informed consent, the individual or guardian must be apprised of:
 1. Reasons for the request for information;
 2. Reasons for recommending the use of medical and/or behavioral intervention;
 3. Alternatives that might be used and the reasons for choosing the planned intervention;
 4. The right to disapprove implementation of this intervention or to withdraw approval at any time;
 5. The potential risk to the individual or others if the intervention is not implemented.
 - C. When informed consent is either denied or subsequently withdrawn by the competent adult or legal guardian and the CEO or Regional Administrator determines that such refusal is not in the individual's best interest, the matter shall be referred to the Regional Assistant Director for further consideration. If the RAD believes that further consideration or possible judicial action is warranted, he or she shall refer the matter to the Director, Division of Developmental Disabilities.
 - D. Under certain limited circumstances, the CEO may grant informed consent in accordance with Division Circular #32.
 - E. When a guardian will not be available, staff shall encourage the guardian to delegate decision making authority for informed consent by power of attorney to a competent family member, friend, BGS or other interested party in order to assure the availability of a guardian. Delegation of decision making authority shall terminate upon revocation of the power of attorney or death of the guardian. A copy of the power of attorney shall be included in the client record.
 - F. Power of attorney may not be delegated to Division staff or staff or licensee under contract with or regulated by the Division if they are providing direct services to that individual.

VI. PROCEDURES:

- A. Informed consent shall be obtained by appropriate professional staff as identified in the applicable Division Circular.
- B. When informed consent is required for medical or behavioral treatment, the person obtaining the consent shall be qualified to explain the proposed intervention and to answer questions.
- C. Informed consent shall be in writing except in urgent situations. In urgent situations, informed consent may be obtained orally but shall later be confirmed in writing by the consenting party. When informed consent is obtained orally, the consent shall be witnessed by a second staff member.
- D. All attempts to obtain informed consent as well as the results of attempts to obtain written consent shall be documented in the client record. In order to establish lack of response to a request for informed consent, two mailings, one via certified mail and one by regular mail shall occur. These attempts may be made simultaneously.
- E. The request for informed consent shall include a date by which response is required no later than 10 calendar days.
- F. When informed consent for medical or behavioral intervention is refused by an individual or guardian, the efforts of staff to obtain consent shall be documented and the individual or guardian shall be requested to sign a refusal of medical or behavioral intervention.

_____/s/_____
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